Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1994

GENSTAR STONE PRODUCTS COMPANY, et al.
Petitioners,

v.

STATE OF MARYLAND, et al.
Respondents.

On Petition For A Writ of Certiorari
To The Court of Appeals of Maryland

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

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QUESTIONS PRESENTED

Does Md. Code Ann., Nat. Res. § 7-6A-10.2 (Supp. 1994), requiring the Department of Natural Resources (hereinafter "DNR") to establish zones of dewatering influence around hard rock quarries in four counties within which liability will be imposed upon quarry owners for water losses and land subsidence constitute:

(1) a denial of equal protection of the law in violation of U.S. Const. amend. XIV § 1?

(2) a denial of the Due Process Clause of the U.S. Const. amend. XIV as there was no rational basis for its enactment?

(3) a denial of procedural due process in violation of U.S. Const. amend. XIV § 1 in that quarry operators are not afforded an opportunity to participate in the determination of the

zones of dewatering influence and in that judicial powers to determine proximate cause and assess money damages are vested in an administrative agency?

(4) a taking of Petitioners' property without due process of law and without just compensation in violation of U.S. Const. amend V?

PARTIES TO THE PROCEEDING BELOW

Plaintiffs: Maryland Aggregates Association, Inc., a Maryland corporation; Genstar Stone Products Company, a Delaware corporation and a wholly owned subsidiary of Redland North American Holdings, Inc., a Delaware corporation and a wholly owned subsidiary of Redland, P.L.C., a corporation organized under the laws of England and Wales; Laurel Sand & Gravel, Inc., a Maryland corporation; H. B. Mellott Estate, Inc., a Pennsylvania corporation; Martin Marietta Aggregates, a Maryland corporation; Lehigh Portland Cement Co., a Pennsylvania corporation; Independent Cement Corp., a New York corporation; Phoenix, Inc., a Maryland corporation; Essroc Materials, Inc., a Pennsylvania corporation; The Arundel Corporation, a Maryland corporation.

Defendants: William Donald Schaefer

(succeeded by Parris N. Glendening), Governor; J. Joseph Curran, Jr., Attorney General of the State of Maryland; Torrey C. Brown, M.D., Secretary, Department of Natural Resources; State of Maryland.

Intervening Defendants: David T. Duree; S. Lawrence Maxwell; Richard J. McEvoy; Richard H. Offutt, Jr.

TABLE OF CONTENTS

	Page
Questions Presented.....	i
Parties to the Proceeding Below.....	iii
Table of Authorities.....	vii
Opinion Below.....	2
Jurisdiction.....	2
Constitutional and Statutory Provisions Involved.....	3
Statement of the Case.....	4
Reasons for Granting the Writ.....	7
Conclusion.....	27
Appendix:	
Order of the Court of Appeals of Maryland, Case No. 40 (November 7, 1994).....	1a
Opinion of the Court of Appeals of Maryland, Case No. 40 (March 22, 1995).....	3a
Opinion and Order of the Circuit Court for Anne Arundel County, Case No. C-91-02275 (March 23, 1992).....	73a
Opinion and Order of the Circuit Court for Anne Arundel County, Case No. C-91-02275 (March 7, 1994).....	75a

Page

Appendix (continued):

Constitutional and Statutory Provisions 95a

Manner of Raising Federal Questions..... 102a

TABLE OF AUTHORITIES

Cases

	Page
Bannum, Inc. v. City of Louisville, Ky., 958 F.2d 1354 (6th Cir. 1992).....	18, 19
Block v. Hirsh, 256 U.S. 135 (1935).....	14
Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924).....	14
Christopher Lake Development Co. v. St. Louis County, 35 F.3d 1269 (8th Cir. 1994).....	9, 10, 11
Finley v. Teeter Stone, Inc., 251 Md. 428 (1968).....	22
Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987).....	10
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).....	26
U.S. v. Carolene Products Co., 304 U.S. 144 (1938).....	12, 13

Annotations

Annotation, Consideration of extrinsic evidence on question of constitutionality or unconstitutionality of statute, 82 L.Ed. 1244.....	13, 14

TABLE OF AUTHORITIES
(continued)

Statutes

	Page
28 U.S.C.A. § 1257(a) (1993).....	3
Md. Code Ann., Nat Res. § 7-6A-10.1 (Supp. 1994).....	passim
Md. Code Ann., Nat. Res. § 7-6A-10.2 (Supp. 1994).....	passim

Constitutional Provisions

U.S. Const. amend. V.....	passim
U.S. Const. amend. XIV §1.....	passim

No.

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v.

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PETITION FOR A WRIT OF CERTIORARI
To The Court of Appeals of Maryland

Genstar Stone Products Company and Phoenix, Inc., two of the plaintiffs in the case below, by Richard A. Reid and William A. Franch, their attorneys, petition this Honorable Court for a writ of certiorari to review the judgment of the Court of Appeals of Maryland entered on November 7, 1994 in Case No. 40,

September Term, 1994 entitled "Maryland Aggregates Association, Inc., et al. v. State of Maryland, et al.."

OPINION BELOW

On November 7, 1994, the Court of Appeals of Maryland passed an Order reading in part as follows:

> For reasons to be stated in an opinion later to be filed, it is this 7th day of November, 1994, ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that the judgment of the Circuit Court for Anne Arundel County is affirmed; . . .

The opinion of the Court of Appeals of Maryland, filed March 22, 1995, fully appears in the Appendix.

JURISDICTION

The judgment sought to be reviewed herein was entered on November 7, 1994.

On January 27, 1995, Chief Justice William H. Rehnquist signed an Order (A-550) extending the time for filing a petition for a writ of certiorari herein to and including April 6, 1995. Jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. § 1257(a) (1993) providing:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of any State is drawn in question on the ground of its being repugnant to the Constitution, . . . of the United States, ...

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Md. Code Ann., Nat. Res. §§ 7-6A-10.1-10.2 (Supp. 1994); U.S. Const. amend. V; U.S. Const. amend. XIV § 1. The pertinent

text of the foregoing provisions is set forth in the Appendix.

STATEMENT OF THE CASE

House Bill 499, Acts 1991, Ch. 379, codified as Md. Code Ann., Nat. Res. § 7-6A-10.1-10.2 (Supp. 1994) (hereinafter the "Act"), requires the Department of Natural Resources (hereinafter "DNR"), as a condition of a surface mining permit in Baltimore, Carroll, Frederick and Washington Counties, to delineate a zone of dewatering influence around the quarry and imposes upon the permittee liability for well failures and sinkholes developing within that purported zone of dewatering influence. The tests for determinining liability differ. Within the zone, the permittee is required to replace water supplies that fail, including municipal and industrial supplies, unless it can show by clear and

convincing evidence to DNR that it did not cause the failure. With respect to land subsidence within the zone, the permittee will be required to restore the property or pay monetary compensation upon a determination of proximate cause by DNR.

Petitioners and other quarry operators filed suit for declaratory judgment and injunctive relief on July 1, 1991, the day the Act took effect, maintaining that it is unconstitutional because, inter alia:

1. There was and is insufficient evidence to show that a problem exists as a result of water pumped from a quarry with respect to well failures and sinkholes so that there was no basis for the legislation.

2. If a problem exists, it is no different than the problem attendant upon

any other user's appropriation of ground water so that quarries have been unfairly singled out from other users for liability.

3. If a problem exists, the means selected for solving it are arbitrary in that a zone of dewatering influence in karst terrain can be determined, if at all, only by very costly subsurface exploration, which expense will have to be borne by the quarry operators.

4. The Act deprives quarry owners of their constitutional property right to use the percolating water in their land in the same manner as others are entitled to use such water.

The Circuit Court for Anne Arundel County, Judge Duckett, granted Plaintiffs' Motion for Interlocutory Injunction on March 23, 1992. On March

7, 1994, however, the circuit court, Judge Cawood, granted Defendants' Motion for Summary Judgment. On November 7, 1994, the Court of Appeals of Maryland affirmed that judgment, issuing its opinion on March 22, 1995. The manner in which the federal questions sought to be reviewed by this Court were raised is set forth in the Appendix.

REASONS FOR GRANTING THE WRIT

THE DECISION HEREIN IS IN CONFLICT WITH DECISIONS OF THIS COURT AND THE COURT OF APPEALS FOR THE 8TH CIRCUIT AND WAS NOT SUPPORTED BY THE EVIDENCE

The injustice and arbitrariness of the Act can be seen in the following example. Assume that a quarry, a municipality, an industry, a farm and ten homeowners are pumping from the same aquifer within a quarry's zone of dewatering influence. Pumpage is at the

following rates: quarry - 500,000 gallons per day; industry - 750,000 gallons per day; municipality - 1,000,000 gallons per day; farm - 100,000 gallons per day; homeowners - 10,000 gallons per day. If the aquifer was depleted, such that the water supply of the municipality, the industry, the farm and the homeowners failed, the quarry alone would be required to replace all of those systems or provide an alternate water supply unless it could show by clear and convincing evidence to DNR that the proximate cause of the loss of the water supplies was not the result of its pit dewatering. Also, only the quarry would be responsible for any land subsidence within its zone of dewatering influence if DNR determines that its pit dewatering was the proximate cause of the sudden subsidence of the surface of the land.

In essence, a quarry is being asked to insure the water supply of everyone within its zone of dewatering influence and to respond in monetary damages for any sudden subsidence of the surface of the land within that area.

The arbitrariness of the Act is even more apparent when one considers that the area where the quarries are located is characterized by naturally occurring sinkholes, Md. Code Ann., Nat. Res. § 7-6A-10.2(a)(3)(ii) (Supp. 1994), unpredictable locations of underground water, and frequent well failures due to seasonal fluctuations of the water table and shallow wells.

In Christopher Lake Development Co. v. St. Louis County, 35 F.3d 1269 (8th Cir. 1994), the United States Court of Appeals for the Eighth Circuit held that a regulation requiring the first

developer in an area to provide a storm water drainage system to serve the entire area including land not owned by the developer, was a violation of the equal protection clause of the Fourteenth Amendment because it singled out the first developer and placed the entire burden of a drainage system on it. The court said:

> However, even assuming the legitimacy of the County's purpose in requiring a drainage system, the application of the Criteria may violate the equal protection clause. "If the [property owners] were being singled out to bear the burden of [the State's] attempt to remedy these problems, although they had not contributed to it more than other coastal landowners, the State's action, even if otherwise valid, might violate ... the Equal Protection Clause. Nollan v. California Coastal Comm'n, 483 U.S. 825, 835 n.4, 107 S.Ct. 3141, 3148 n.4, 97 L.Ed.2d 677

> (1987). Although the County's objective to prevent flooding may be rational, it may not be rational to single out the Partnership to provide the entire drainage system.

Id. at 1274 (alterations in original).

The court also ruled that the county's action in requiring the partnership to pay more than its pro rata share of the drainage system constituted a taking of the partnership's property in violation of the Fifth Amendment to the United States Constitution.

The holding in the case sub judice is in conflict with the holding in Christopher Lake Development Co. in that it places the burden for insuring adequate water supplies and the integrity of the surface of the land entirely upon the quarry and not upon all other large users of water in the area.

Even though all material facts

either favored Petitioners or were disputed, the Court of Appeals of Maryland affirmed the summary judgment entered by the Circuit Court for Anne Arundel County in favor of Respondents, thus preventing Petitioners from challenging the disputed facts in a trial on the merits. The rationale of the circuit court (adopted by the Court of Appeals) was in part that "legislative findings of fact are the sole province of the Legislature and may not be disputed by the courts." (See, Appendix p.85a and pp. 19a-27a.) This conclusion is contrary to the holding of U.S. v. Carolene Products Co., 304 U.S. 144, 153 (1938), where this Court held:

> Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may

> properly be made the subject of judicial inquiry, and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.

(citations omitted). See also cases collected in the Annotation, Consideration of extrinsic evidence on question of constitutionality or unconstitutionality of statute, 82 L.Ed. 1244, 1247-48, where it is said:

> And state legislation alleged to violate the due process clause or the equal protection clause of the Fourteenth Amendment to the Constitution of the United States may be shown to be invalid by facts established by evidence as well as by facts judicially noticed.
>
> . . . .
>
> Although a legislative finding or declaration as to the existence of facts justifying certain legislation is entitled to respect, the court is not thereby precluded from

> considering evidence of facts of which it may not take judicial notice in order to determine whether there is any proper basis for the enactment in question. Block v. Hirsch (1921) 256 U.S. 135, 65 L. ed. 865, 41 S. Ct. 458, 16 A.L.R. 165; Chastleton Corp. v. Sinclair (1924) 264 U.S. 543, 68 L. ed. 841, 44 S. Ct. 405 (wherein Holmes, J., said: "A court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared"); . . . .

(citations omitted).

There is no rational basis for distinguishing between ground water appropriated by quarries and ground water appropriated by any other user. The attempts to justify such a distinction by the Court of Appeals of Maryland show a fundamental misunderstanding of the subject matter of the statute. For examples, the court said:

1. "Quarries pump large amounts

of water at a constant pace." (Appendix, p. 35a.) The largest percentage of water pumped by quarries is not ground water which conceivably could be available for use by others. Most water pumped by quarries is rainwater that falls directly into the pit, surface runoff and infiltration from streams. Consequently, the gallons of water pumped by quarries as reported to the Water Resources Administration and catalogued in its publications are misleading. On the other hand, every gallon of water reported by other users is ground water that could be available to the water supplies of neighboring properties. The ground water pumped by other users is gone forever, either being incorporated in a product, sold for its own use or disposed of in a sewer system, whereas the water pumped by quarries is returned

to the water system of the area.

Quarries do not pump at a constant rate. The rate at which they pump varies and depends on numerous factors, such as the amount of precipitation.

The records of the Water Resources Administration show that quarries are not the largest users of ground water in the counties covered by the Act.

2. "... [A] quarry cannot move its pumping site if its appropriation of groundwater begins to damage the surrounding area." (Appendix, p. 35a.)

The record indicates that this is equally true of other users. The affidavit of Page Herbert and the testimony of Gary Setzer, Director of the Water and Mineral Management Division of DNR, calls into question the ability of other users to move their water supply. Mr. Setzer admitted that one could only

move one's water supply if one had another location on one's property where a comparable source of water could be found; that this was very problematical in karst terrain where one never knows where water will be located; that moving the well would not serve any useful purpose unless it would strike an aquifer different than the first aquifer; that pumping from the new aquifer may create new and different problems than occurred from pumping from the first aquifer; and that moving a well would have no effect on sinkholes that had already occurred.

3. "If the rock to be mined lies beneath the water table, the mine operator must pump away a sufficient quantity of water to lower the water table around the pit." (Appendix, p. 5a.)

This statement demonstrates a complete misunderstanding of the

hydrogeology of karst terrain. The water table around the pit is not lowered to the depth of the pit. There was evidence in the record of wells in close proximity to quarries pumping at one-third the depth of the quarry without a problem.

4. "Increasing the rate of water flow, for example by pumping, accelerates the formation of underground channels and of sinkholes." (Appendix, p. 6a.) This statement is inapplicable to pumping in karst terrain in Maryland.

In Bannum, Inc. v. City of Louisville, Ky., 958 F.2d 1354 (6th Cir. 1992), the United States Court of Appeals for the Sixth Circuit, in an analogous situation, held that a city zoning ordinance requiring special permits for community treatment centers (CTCs) for felony offenders but not requiring such permits for other similar group home uses

violated equal protection. The court, in finding that the city did not present sufficient evidence that CTCs were a danger to the community, ruled that:

> If the city's goal was to protect its residents from recidivists, then some data reflecting the extent of the danger must exist in order to render the different treatment of CTC's rationally related to that goal. The rational relationship standard is not met when the classification relied upon by the legislative authority is "so attenuated as to render the distinction arbitrary or irrational.

Id. at 1360-61 (emphasis added) (citations omitted). Similarly, in the case sub judice, the legislature did not have any data to support the different treatment of quarries. Thus, the classification is "arbitrary" and in violation of the equal protection clause.

Furthermore, the legislative record

was devoid of evidence that activities of quarries had caused water supply failures or were likely to do so. The court of appeals' conclusions were not supported by the evidence of record. The court of appeals echoed Judge Cawood's finding that "the General Assembly heard testimony from geological experts, from representatives of the mining industry, and from concerned citizens and environmental groups." (Appendix, pp. 23a-24a.) The implication is that expert witness testimony supported the Act. All of the evidence was, in fact, to the contrary. It is not just, as the court of appeals stated, that Petitioners disagreed with the factual findings of the General Assembly - it is that the factual findings had no basis, i.e., the General Assembly was not "entitled to reach the conclusions embodied in the

statute." (Appendix, p.26a.) Mr. Setzer of DNR testified that there was no evidence of well failures caused by quarry dewatering in the four counties covered by the Act with the possible exception of a well failure on the property of Carroll County Foods. Mr. Herbert, an expert geologist and hydrogeologist, testified that in his opinion the well failure of Carroll County Foods was not caused by the dewatering of the adjacent quarry.

As to land subsidence, Mr. Setzer testified that there was no evidence that quarry dewatering in the four counties covered by the Act had caused sinkholes, with the possible exception of a sinkhole on the property of Carroll County Foods.[2/]

2/ Although it is not clear whether the (continued...)

Mr. Herbert testified that he studied sinkholes from aerial photographs of the four counties involved; that sinkholes predated the quarries; and that the sinkholes which are occurring now are along the same geological fault lines as the sinkholes which predated the quarries, leading him to the conclusion that the quarries were not causing sinkholes.

There was no evidence that the legislature heard testimony from an expert witness supporting the bill.

2/ (...continued) legislature considered the testimony in the case of Finley v. Teeter Stone, Inc., 251 Md. 428 (1968), there was testimony in that case by an expert hydrogeologist that sinkholes on the Finley property were related to the dewatering of Petitioner Genstar's Medford quarry. That testimony was not challenged at the time because the lower court granted a motion for a directed verdict at the end of plaintiffs' case.

All of the evidence from experts was to the contrary. For example, the letter from Gerald Ahnell of Dunn Geoscience Corporation, referred to by the circuit court in support of its decision, states:

> In conclusion, for the open pit quarry operations in central Maryland, it becomes nearly impossible to assess responsibility for water loss or sinkhole initiation without extensive site-specific knowledge of the pre-existing surfaces and/or subsurface conditions. . . . Thus, to assume that there is a direct cause-effect relationship between the adverse impact and quarrying would be speculative at best without a substantial and expensive subsurface database in the vicinity of the impacted property. . . .

Similarly, there is no evidence that the legislature reviewed any geological studies other than, perhaps, 6 pages excerpted from "The Wakefield Valley Study" which consisted of 74 pages

and an appendix. That study, cited by the circuit court in support of its decision, had this to say:

> RGH anticipates that neither the expansion of Genstar's Medford Quarry nor Lehigh's New Windsor Quarry will have a significant impact on the surrounding hydrogeologic regimes that replacing water supplies will be required. . . .
>
> . . . .
>
> Since many private wells are located near the Genstar facility, concerns have arisen regarding continued dewatering of the marble aquifer and potential groundwater impacts. It is RGH's opinion that at the present time, there are no scientifically proven cases of quarry induced residential water loss or quality degradation. . . .

The legislature did hear from many concerned citizens as individuals and as groups. There were, however, no facts introduced before the legislature to support their concerns. On the contrary,

evidence of well failures in Carroll County, for example, revealed more well failures in other parts of the county than in proximity to the quarries. Periodic reviews by the Water Resources Administration, of DNR, in publications entitled "The Quantity and Natural Quality of Ground Water in Maryland" in 1982 and 1987, discussed many problems relating to ground water in the State of Maryland but made no mention whatsoever of any problem relating to quarries. The record is simply devoid of facts which would justify the enactment of this legislation.

Finally, by depriving quarry operators of their common law right (enjoyed by every other property owner in the State) to use the percolating water in their property for any legitimate purpose without liability for well

failures or land subsidence on neighboring property, the Act: (1) causes substantial diminution in the value of Petitioners' property and (2) causes interference with distinct investment-backed expectations of Petitioners which did not bargain for the additional expense and liability when they went into the quarry business. As stated by this Court, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 422 (1922). The Act thus constitutes a taking of Petitioners' property without due process of law and without just compensation in violation of the Fifth Amendment to the U. S. Constitution made applicable to Maryland by the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the Act is repugnant to the Constitution of the United States, and this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX

ORDER OF COURT TO BE REVIEWED

MARYLAND AGGREGATES ASSOCIATION, INC. et al.	*	In the
	*	Court of Appeals
v.	*	of Maryland
STATE OF MARYLAND et al.	*	No. 40
	*	September Term, 1994

ORDER

For reasons to be stated in an opinion later to be filed, it is this 7th day of November, 1994,

ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that the judgment of the Circuit Court for Anne Arundel County is affirmed; and it is further

ORDERED, that the injunction issued on August 16, 1994 by the Circuit Court for Anne Arundel County prohibiting the State from implementing the statute in question while the appeal was pending be,

and it is hereby, vacated, and it is further

ORDERED, that the mandate shall issue forthwith and the costs shall be paid by the appellants.

/s/ Robert C. Murphy
Chief Judge

OPINION OF COURT TO BE REVIEWED

IN THE COURT OF APPEALS OF MARYLAND

No. 40
September Term, 1994

MARYLAND AGGREGATES
ASSOCIATION, INC. et al.

v.

STATE OF MARYLAND

Murphy, C.J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker,

JJ.

Opinion by Eldridge, J.

Filed: March 22, 1995

This case presents several constitutional challenges to Maryland Code (1973, 1989 Repl. Vol., 1994 Cum. Supp.), §§ 7-6A-10.1 and 7-6A-10.2 of the Natural Resources Article, which relate to the

appropriation of water in connection with certain surface mining operations.

I.

Any individual, business, or governmental entity in Maryland "which may appropriate or use any waters of the State, whether surface water or groundwater," must first obtain a water appropriation permit from the Department of Natural Resources. Code (1973, 1990 Repl. Vol.), § 8-802 of the Natural Resources Article.[1/] A surface mine must have a water appropriation permit to pump away water that would otherwise accumulate in the mine. The pumping

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1/ An exception is made for certain domestic and small scale agricultural uses. Maryland Code (1973, 1990 Repl. Vol.), § 8-802(b) of the Natural Resources Article.

process is known as "dewatering."[2/] Surface mine dewatering removes groundwater, rainfall and other surface water runoff from the surface mine pit. If the rock to be mined lies beneath the water table, the mine operator must pump away a sufficient quantity of water to lower the water table around the pit.

Several Maryland counties include areas of karst terrain. In karst terrain, pockets of limestone and other carbonate rocks are slowly dissolved by water flowing or percolating underground, leaving behind underground cavities and

---

2/ "'Dewater' or 'dewatering' means to pump water out of a pit." Code (1974, 1989 Repl. Vol., 1994 Cum. Supp.), § 7-6A-10.2(a)(2) of the Natural Resources Article.

and channels.[3/] Increasing the rate of water flow, for example by pumping, accelerates the formation of underground channels and of sinkholes.

The legislation challenged in this case, §§ 7-6A-10.1 and 7-6A-10.2 of the Natural Resources Article, is intended to protect landowners in karst terrain from the effects of surface mine dewatering. During the legislative process, the General Assembly received testimony from over fifty individuals, both lay and expert, and considered a number of

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3/ Karst terrain is defined in the Act as follows (§ 7-6A-10.2(a)(3)):

> "'Karst terrain' means an irregular topography that is ... [c]aused by a solution of limestone and other carbonate rock; and ... [c]haracterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams."

technical reports concerning the effects of surface mine dewatering in karst terrain. Groups opposed to the proposed legislation, principally enterprises involved in surface mining, and groups pressing for its adoption, principally individual property owners and community associations from regions close to quarries, each engaged in vigorous lobbying. Ultimately, the General Assembly enacted the legislation regulating surface mine dewatering in karst terrain.

The Act contains the following legislative findings (§ 7-6A-10.1(a)):

> "[I]n certain regions of the State dewatering of surface mines located in karst terrain may significantly interfere with water supply wells and may cause in some instances sudden subsidence of land, known as sinkholes.

> Dewatering in karst terrain may result in property damage to landowners in a definable zone of dewatering influence around a surface mine."

The Act protects "affected property owners in Baltimore, Carroll, Frederick, and Washington Counties where karst terrain is found," by establishing "zones of dewatering influence around surface mines . . . ." § 7-6A-10.1(b). The Department of Natural Resources must establish the zone of dewatering influence when it issues the water appropriation permit for dewatering to the operator of a surface mine affected by the Act. § 7-6A-10.2(b)(1). The Department must scientifically determine the area affected by the mine's pumping activity, based on "local topography, watersheds, aquifer limits, and other

hydrogeologic factors . . . ." § 7-6A-10.2(b)(2).

The statute contemplates that the zone of dewatering influence may extend beyond the land owned by the mining operation itself. Accordingly, subsection (c)(1) of § 7-6A-10.2 provides that, within the zone of dewatering influence, mine operators must "[r]eplace, at no expense to the owner of real property that is affected by the surface mine dewatering, a water supply that fails as a result of declining ground water levels. . . ." An exception is made where the failure of the water supply is not caused by the surface mine operation (§ 7-6A-10.2(f)):

> "The Department may not require a [mine operator] to replace water supplies, as provided in this section, if the [mine operator] demonstrates to the Department by

> clear and convincing evidence that the proximate cause of the loss of water supply is not the result of pit dewatering."

The Act also establishes a scheme to compensate landowners for sinkhole damage that occurs within the zone of dewatering influence. Subsection (c)(2) of § 7-6A-10.2 provides as follows:

> "Upon a determination by the Department of proximate cause after the [mine operator] has received proper notice and an opportunity to respond and provide information, [the mine operator shall] pay monetary compensation to the affected property owner or repair any property damage caused as a result of the sudden subsidence of the surface of the land."

Furthermore, the Act directs the Department to create, by regulations, an administrative process for resolving claims brought under the Act, § 7-6A-10.2(h), and requires the Department

to "provide opportunity for a contested case hearing," § 7-6A-10.2(g).

II.

This litigation was commenced by Maryland Aggregates Association, Inc., an organization that represents the interests of the surface mining industry, and by the individual operators of hard rock quarries located in karst terrain in Baltimore, Carroll, Frederick and Washington Counties.[4/] Maryland Aggregates filed suit in the Circuit Court for Anne Arundel County on July 1, 1991, the day after the Act took effect, naming as defendants the State of Maryland, the Governor, the Attorney General, and the Secretary of the

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4/ For convenience, we shall in this opinion refer to all of the plaintiffs collectively as "Maryland Aggregates."

Department of Natural Resources.[5/] Maryland Aggregates sought a declaratory judgment holding the Act unconstitutional on a number of grounds and an injunction against the enforcement and implementation of the Act.

In the circuit court, Maryland Aggregates contended that the Act violated numerous provisions of the Constitution of the United States and of the Constitution of Maryland. It contended that the Act violated its right to "substantive due process" because there was no rational basis for the legislation. It argued that the Act

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5/ Four individual owners of property near quarry sites were later permitted to intervene as defendants. These individuals were represented by the Clinical Law Office at the University of Maryland School of Law.

violated equal protection principles by making an unreasonable distinction between quarry operators and other large water users. Maryland Aggregates also claimed that the statute denied equal protection of the laws to the residents of the nineteen Maryland counties unaffected by the Act. The plaintiffs argued that the Act interfered with mine operators' constitutional rights to jury trial and deprived them of their property without just compensation. They contended that the statutory procedures for establishing zones of dewatering influence and for resolving claims under the Act were constitutionally deficient. Finally, Maryland Aggregates argued that the Act impermissibly granted judicial powers to an administrative agency in violation of the separation of powers

requirement set forth in Article 8 of the Maryland Declaration of Rights.

The State responded to Maryland Aggregates' constitutional arguments on their merits, and also contended that the State of Maryland, the Governor and the Attorney General were not proper parties to the litigation.

On March 9, 1992, the Circuit Court for Anne Arundel County granted Maryland Aggregates' motion for an interlocutory injunction against the enforcement of the Act. On March 7, 1994, however, the circuit court granted summary judgment in favor of the defendants, and filed a declaratory judgment rejecting all of Maryland Aggregates' constitutional contentions. The circuit court also agreed that the Secretary of the Department of Natural Resources was the

only proper defendant.[6/] Maryland Aggregates appealed to the Court of Special Appeals and, before any proceedings in the intermediate appellate court, petitioned this Court for a writ of certiorari, raising the same constitutional objections to the Act that it had pressed at trial. We granted Maryland Aggregates' petition. 335 Md. 341, 643 A.2d 441 (1994).

Meanwhile, in light of the circuit court's declaratory judgment in favor of the State, the Department of Natural

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6/ Maryland Aggregates concedes that "the lower court's ruling on this point does not affect the outcome of this case. . . ." (Maryland Aggregates' brief at 45 n. 7). Accordingly, we do not decide in the present case whether the defendants other than the Secretary of the Department of Natural Resources were proper parties to the litigation.

Resources had begun to enforce the Act. Aggrieved by the Department's activity, Maryland Aggregates filed in the circuit court a further motion for an injunction against enforcement of the Act pending appeal. On August 16, 1994, observing that the case had been set for argument in this Court in early November 1994, the circuit court granted Maryland Aggregates' motion and enjoined enforcement of the Act pending appeal. This Court deferred action on the State's subsequent motion to dissolve, suspend, modify or stay the injunction until oral argument took place on November 6, 1994. On November 7, 1994, this Court entered an order affirming the judgment of the Circuit Court for Anne Arundel County and vacating the injunction. We now set forth the reasons for our earlier order.

III.

Maryland Aggregates first contends that the Act violates the Due Process Clause of the Fourteenth Amendment to the federal constitution and Article 24 of the Maryland Declaration of Rights because, according to Maryland Aggregates, there was no rational basis for its enactment.[7/] The General Assembly found as a fact that "dewatering

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7/ Article 24 of the Maryland Declaration of Rights provides as follows:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the Law of the land."

(continued...)

of surface mines located in karst terrain may significantly interfere with water supply wells and may cause in some instances sudden subsidence of land, known as sinkholes." § 7-6A-10.1(a) of the Natural Resources Article. Nonetheless, Maryland Aggregates maintains that it should be given an opportunity to prove at trial that quarries cause neither water supply failures nor sinkholes, and that "there was no evil at hand for correction" by the Legislature. (Maryland Aggregates' brief at 11).

7/ (...continued)

The Fourteenth Amendment to the United States Constitution provides, in part, as follows:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

Maryland Aggregates characterizes its disagreement with the legislative findings as a dispute of material fact which should have precluded the entry of summary judgment. The circuit court, however, held that "[t]he Defendants are not required to prove the wisdom of the statute as a matter of law . . . but only that there is a rational basis for the statute as a matter of law." Since the court held that "[t]he Maryland General Assembly had a substantial rational basis to pass the Act," it granted summary judgment for the State on the so-called substantive due process contention.

This Court in Bowie Inn v. City of Bowie, 274 Md. 230, 236, 335 A.2d 679, 683 (1975), in rejecting a similar "substantive due process" challenge to economic regulatory legislation, empha-

sized that "[t]he wisdom or expediency of a law adopted" by a legislative body "is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported." Accord: Dawson v. State, 329 Md. 275, 283-284, 619 A.2d 111, 115 (1993); Ogrinz v. James, 309 Md. 381, 394-395, 524 A.2d 77, 84 (1987); Montgomery County v. Fields Road, 282 Md. 575, 583-585, 386 A.2d 344, 348-349 (1978); Edgewood Nursing Home v. Maxwell, 282 Md. 422, 426-427, 384 A.2d 748, 751 (1978); Governor v. Exxon Corp., 279 Md. 410, 423-429, 370 A.2d 1102, 1110-1113 (1977), aff'd, 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978); Westchester West No. 2 v. Mont. Co., 276 Md. 448, 454-455, 348 A.2d 856, 860 (1975), and cases there

cited. See also General Motors Corp. v. Romein, 503 U.S. 181, 112 S.Ct. 1105, 1112, 117 L.Ed.2d 328, 340 (1992); Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963); Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955).

In Bowie Inn v. City of Bowie, supra, 274 Md. 230, 335 A.2d 679, as in the present case, industry representatives whose lobbying efforts had failed to prevent the enactment of legislation adverse to their interests, later challenged the legislation in court. Concluding that the plaintiffs in Bowie Inn were, "in effect, asking us to substitute our judgment concerning the wisdom of [the challenged ordinance] for that of the City Council of Bowie," this Court sustained the ordinance against the

due process challenge. 274 Md. at 236, 335 A.2d at 683.

More recently the Supreme Court, in rejecting a similar due process challenge to a Michigan statute, stated (General Motors Corp. v. Romein, supra, 112 S.Ct. at 1112, 117 L.Ed.2d at 340):

> "Having now lost the battle in the Michigan Legislature, petitioners wished to continue the war in court. Losing a political skirmish, however, in itself creates no ground for constitutional relief."

Likewise, having failed to convince the General Assembly of the merits of its position, Maryland Aggregates seeks to present its theories in court. Nevertheless, "'courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.'" Governor v. Exxon Corp., supra, 279 Md. at 425, 370

A.2d at 111, quoting Ferguson v. Skrupa, supra, 372 U.S. at 730, 83 S.Ct. at 1031, 10 L.Ed.2d at 97. In particular, factual determinations made by a legislative body are not ordinarily subject to review in the courts. Even in the absence of legislative findings, "the legislature is presumed to have acted within constitutional limits so that if any state of facts reasonably can be conceived that would sustain the constitutionality of the statute, the existence of that state of facts as a basis for the passage of the law must be assumed." Edgewood Nursing Home v. Maxvell, supra, 282 Md. at 427, 384 A.2d at 751.

As Judge Cawood for the circuit court observed in the present case, the General Assembly heard testimony from geological experts, from representatives

of the mining industry, and from concerned citizens and environmental groups. After briefly summarizing the conflicting testimony, Judge Cawood pointed out as follows:

> "Needless to say, we do not decide whether Plaintiffs' or Defendants' experts are more likely to be correct. The proper forum for that is the Legislature. In passing almost any law, one can argue whether it has a rational basis, and which experts were really correct or really told the truth."

The circuit court properly deferred to the General Assembly's legislative findings. In Bowie Inn v. City of Bowie, supra, this Court explained why judicial review of legislative decision making must be narrowly circumscribed. Quoting from Justice Frankfurter's concurring opinion in American Federation of Labor, v. American Sash & Door Co., 335 U.S.

538, 553, 69 S.Ct. 258, 265, 93 L.Ed. 222, 230-231 (1949), the Court in Bowie Inn stated as follows (274 Md. at 238, 335 A.2d at 684):

> "'Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophesy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests -- the people.'"

See also Governor v. Exxon Corp., supra, 279 Md. at 428-429, 370 A.2d at 1113.

In light of these principles,

Maryland Aggregates' disagreement with the factual findings of the General Assembly does not create an issue of fact which is material to the Act's validity under the due process clauses of the federal and state constitutions. As the circuit court pointed out, the question is not whether the General Assembly was correct; it is whether it was entitled to reach the conclusions embodied in the statute. The surface mine dewatering act establishes a compensation scheme for affected landowners that obviously bears a rational relationship to a problem that the General Assembly identified for redress. Under these circumstances, there is simply no basis upon which a court could conclude that the Act was beyond the authority of the General Assembly. The circuit court properly

granted summary judgment in favor of the State with respect to Maryland Aggregates' substantive due process argument.

IV.

Maryland Aggregates next contends that the Act employs classifications that violate the Equal Protection Clause of the Fourteenth Amendment and the equal protection component of Article 24 of the Maryland Declaration of Rights.[8/] In

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8/ Section I of the Fourteenth Amendment to the United States Constitution includes the following guarantee: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." While Article 24 of the Maryland Declaration of Rights does not contain an express equal protection clause, it nonetheless embodies the concept of equal protection. See Verzi v. Baltimore County, 333 Md. 411, 417, 635 A.2d

(continued...)

particular, Maryland Aggregates complains that "quarries have been unfairly singled out" from other large consumers of groundwater in a manner that violates

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8/ (...continued)

967, 969-970 (1994); Kirsch v. Prince George's County, 331 Md. 89, 96, 626 A.2d 372, 375, cert. denied, 114 S. Ct. 600, 126 L. Ed. 2d 565 (1993); Murphy v. Edmonds, 325 Md. 342, 353-354, 601 A.2d 102, 107 (1992), and cases there cited. Furthermore, although the federal and state guarantees of equal protection are "obviously independent and capable of divergent application," they are sufficiently similar that Supreme Court decisions applying the federal clause provide persuasive authority for this Court's application of Article 24. Murphy v. Edmonds, supra, 325 Md. at 354-355, 601 A.2d at 108,

equal protection principles.9/

9/ Maryland Aggregates also suggests that the Act violates equal protection principles because it affects only four Maryland counties. It is clear from our cases, however, that "[a] statute . . . is not invalid merely because it affects counties unequally . . . . Equal protection principles do not require the State to attack all of the various aspects of a problem at once; the government may legislate to remedy one phase of a problem and leave other phases to be resolved later." Department of Transportation v. Armacost, 299 Md. 392, 408-409, 474 A.2d. 191, 199 (1984). See also McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961); Supermarkets Gen. Corp. v. State, 286 Md. 611, 409 A.2d 250 (1979), appeal dismissed, 449 U.S. 801, 101 S.Ct. 45, 66 L.Ed.2d 5 (1980); Washabaugh v. Washabaugh, 285 Md. 393, 404 A.2d 1027 (1979).

While this Court has invalidated territorial classifications on equal protection grounds, it has generally done so where the legislative classifications restricted access to economic opportunities, or imposed economic burdens, in a manner tending to favor residents of one county over residents of another. See generally Verzi v. Baltimore

(continued...)

"When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude . . . and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313, 320 (1985). Thus,

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9/ (...continued)

County, supra, 333 Md. 411, 635 A.2d 967, and cases there cited; Bruce v. Dir., Chesapeake Bay Aff., 261 Md. 585, 276 A. 2d 200 (1971); Md. Coal Etc. Co. v. Bureau of Mines, 193 Md. 627, 69 A.2d 471 (1949); Dasch v. Jackson, 170 Md. 251, 183 A. 534 (1936); Havre de Grace v. Johnson, 143 Md. 601, 123 A. 65 (1923). The present case does not involve such a classification, and Maryland Aggregates' equal protection challenge to the limited territorial scope of the Act is without merit.

classifications drawn by economic regulatory legislation are ordinarily permissible under equal protection principles if they bear a rational relationship to a legitimate state interest.[10/] The Supreme Court recently explained the scope of rational basis review under the Equal Protection Clause in F.C.C. v. Beach Communications,

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10/ Maryland Aggregates argues that the Act should be subjected to a heightened standard of review because it implicates the "very important and valuable right," under common law principles,, of a landowner to use percolating water "without fear of liability for the consequences thereof upon their neighbors." (Maryland Aggregates' brief at 16). For the reasons fully set forth in Murphy v. Edmonds, supra, 325 Md. at 362-364, 601 A.2d at 112, there is no merit to Maryland Aggregates' contention that legislation affecting a common law right should be subject to heightened scrutiny.

Inc., 113 S.Ct. 2096, 2101, 124 L.Ed.2d 211, 221 (1993), as follows:

> "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. . . . This standard of review is a paradigm of judicial restraint."

See also Nordlinger v. Hahn, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992); Gregory v. Ashcroft, 501 U.S. 452, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991).

While this Court has not hesitated to strike down discriminatory economic regulation that lacked any reasonable justification, e.g., Verzi v. Baltimore

County, 333 Md. 411, 635 A.2d 967 (1994), and Kirsch v. Prince George's County, 331 Md. 89, 626 A.2d 372 (1993), we nevertheless accord to the decisions of legislative bodies a strong presumption of constitutionality. In Murphy v. Edmonds, 325 Md. 342, 367, 601 A.2d 102, 114 (1992), we quoted the summary of rational basis review set forth in Whiting-Turner Contract. Co. v. Coupard, 304 Md. 340, 352, 499 A.2d 178, 185 (1985), which stated that a statute

> "can be invalidated only if the classification is without any reasonable basis and is purely arbitrary. Further, a classification having some reasonable basis need not be made with mathematical nicety and may result in some inequality. If any state of facts reasonably can be conceived that would sustain the classification, the existence of that state of facts at the time the law was enacted must be assumed."

See also Briscoe v. P.G. Health Dep't, 323 Md. 439, 448-449, 593 A. 2d 1109, 1113-1114 (1991); Hargrove v. Board of Trustees, 310 Md. 406, 423, 529 A.2d 1372, 1380 (1987), cert. denied, 484 U.S. 1027, 108 S.Ct. 753, 98 L.Ed.2d 766 (1988); Broadwater v. State, 306 Md. 597, 607, 510 A.2d 583, 588 (1986); State v. Wyand, 304 Md. 721, 726-727, 501 A.2d 43, 46 (1985), cert. denied, 475 U.S. 1095, 106 S.Ct. 1492, 89 L.Ed.2d 893 (1986); Department of Transportation v. Armacost, 299 Md. 392, 409, 474 A. 2d 191, 199 (1984); State v. Good Samaritan Hospital, 299 Md. 310, 328, 473 A.2d 892, 901, appeal dismissed, 469 U.S. 802, 105 S.Ct. 56, 83 L.Ed.2d 7 (1984).

According to Maryland Aggregates, the Act deprives the operators of surface mines of the equal protection of the laws

because it fails to regulate other large appropriators of water. In light of the foregoing legal principles, it is apparent that this constitutional challenge to the Act lacks merit. The legislative distinction between quarries and other large water users is not an irrational one. The General Assembly received evidence that quarries have certain unique features with respect to water use. Quarries pump large amounts of water at a constant pace. Quarries cannot interrupt their pumping if emergency water conditions arise, since the pit might flood. Moreover, since a quarry must pump water where it wishes to extract rock, a quarry cannot move its pumping site if its appropriation of groundwater begins to damage the surrounding area.

Furthermore, even if surface mines were not distinguishable from other water users on the basis of such physical facts, the Legislature could have limited the statute to surface mines for other reasons. The General Assembly might have concluded, for example, that surface mines constituted a discrete and manageable group around which to develop and test an effective compensation scheme, or that a mining operation would be more likely than another water user to have relevant hydrogeological data at hand. It is not necessary to identify the reasons that actually prompted the General Assembly to legislate as it did. Plainly, the decision to regulate the effects of surface mine dewatering can be justified on a number of grounds. The Act does not violate constitutional

guarantees of equal protection, and the circuit court correctly granted summary judgment in favor of the State with regard to Maryland Aggregates' equal protection contentions.

V.

Maryland Aggregates next argues that the Act violates the constitutional principle of separation of powers.[11/] The statute requires a mine operator to replace failed water supplies within the zone of dewatering influence, unless the

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11/ Article 8 of the Maryland Declaration of Rights provides as follows:

> "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

operator can demonstrate to the Department of Natural Resources that pit dewatering did not cause the water supply failure. § 7-6A-10.2(c)(1) and (f) of the Natural Resources Article. Furthermore, mine operators must compensate property owners for sinkhole damage within the zone of dewatering influence if the Department determines that the damage was caused by surface mine dewatering. § 7-6A-10.2(c)(2) of the Natural Resources Article. Maryland Aggregates objects to this method of determining its liability under the Act, arguing that "the Legislature, in authorizing the Department of Natural Resources to sit as the sole fact finder and judge in a dispute between neighboring property owner and quarry operator, has displaced the judicial

branch of government in violation of Article 8." (Maryland Aggregates' brief at 26). The circuit court rejected this argument, observing, inter alia, that "the right of the Legislature to delegate powers to administrative agencies has been recognized in this State for over 125 years."

It is true, as Maryland Aggregates suggests, that "any attempt to authorize an administrative agency to perform what is deemed a purely judicial function or power, would violate the separation of powers principle." Shell Oil Co. v. Supervisor, 276 Md. 36, 47, 343 A.2d 521, 527 (1975). This is so because the judicial power in Maryland is vested entirely and exclusively in the courts enumerated in Art. IV, § 1, of the

Maryland Constitution."[12] See generally Shell Oil Co. v. Supervisor, supra, 276 Md. at 44-47, 343 A.2d at 526-527, and cases there cited. Nevertheless, Maryland Aggregates' Article 8 challenge to the Act lacks merit. It is clear from our cases that the power vested in the Department of Natural Resources to determine, in the first instance, factual issues relating to compensation under the Act is not judicial power but quasi-judicial power which may properly be exercised by the Department.

12/ Art. IV, § 1, provides, in pertinent part, as follows:

> "The Judicial power of this State is vested in a Court of Appeals, such intermediate courts of appeal as the General Assembly may create by law, Circuit Courts, Orphans' Courts, and a District Court."

This Court has long recognized that the tasks of making factual determinations and resolving disputes are not reserved exclusively to the judicial branch of government. In Shell Oil Co. v. Supervisor, supra, 276 Md. at 45, 353 A.2d at 526, we quoted the following language from this Court's opinion in Solvuca v. Ryan & Reilly Co., 131 Md. 265, 282, 101 A. 710, 715 (1917):

> "What is a judicial function does not depend solely on the mental operation by which it is performed or the importance of the Act. In solving this question, due regard must be had to the organic law of the state and the division of powers of government. In the discharge of executive and legislative duties, the exercise of discretion and judgment of the highest order is necessary, and matters of the greatest weight and importance are dealt with. It is not enough to make a function judicial that it requires discretion, deliberation, thought, and judgment."

Later, in Attorney General v. Johnson, 282 Md. 274, 286, 385 A.2d 57, 64, appeal dismissed, 439 U.S. 805, 99 S.Ct. 60, 58 L.Ed.2d 97 (1978), the Court stated as follows:

> "As we have already dismissed the notion that judicial power in the constitutional sense is necessarily exercised whenever facts are determined and legal principles are applied to the facts found, we must ascertain what qualities imbue such determinations with judicial power. While we have not, until today, explicitly stated the proposition, we agree with those courts which have said that the essence of judicial power is the final authority to render and enforce a judgment, . . . and we think that conclusion is implicit from our own case law."

In modern times, the complexity of governmental obligations has resulted in increasing reliance upon administrative agencies for the performance of both

rulemaking and adjudicatory functions. This Court has recognized the delegation to administrative agencies of both legislative and adjudicatory power as legitimate, "as the separation of powers concept may constitutionally encompass a sensible degree of elasticity and should not be applied with doctrinaire rigor." Dep't of Nat. Res. v. Linchester, 274 Md. 211, 220, 334 A.2d 514, 521 (1975). See also Christ v. Department, 335 Md. 427, 441, 644 A.2d 34, 40 (1994). Indeed, as Chief Judge Murphy explained for the Court in County Council v. Investors Funding, 270 Md. 403, 426-443, 312 A.2d 225, 238-247 (1973), the principal focus of constitutional inquiry into the exercise of powers by administrative agencies is the limitation of agency authority, rather than the nature of the

authority exercised. Chief Judge Murphy explained as follows (270 Md. at 436, 312 A.2d at 243):

> "The constitutional doctrine of separation of powers . . . does not itself inhibit the delegation to an administrative agency of a blend of executive or legislative powers with powers judicial in nature; the determining factor is not so much the specific powers granted to the administrative agency, but rather the relationship of the courts to the exercise of that power."

Consequently, an agency in the executive branch may ordinarily perform adjudicatory functions in harmony with the principle of separation of powers provided that there is an opportunity for judicial review of the agency's final determination. See, e.g., Attorney General v. Johnson, supra, 282 Md. at 286-288, 385 A.2d at 64-65; County Council v. Investors Funding, supra, 270

Md. at 432-437, 312 A.2d at 241-243; Insurance Comm'r v. Nat'l Bureau, 248 Md. 292, 299-301, 236 A.2d 282, 286-287 (1967); Burke v. Fidelity Trust Co., 202 Md. 178, 187-189, 96 A.2d 254, 260 (1953); Johnstown Coal & Coke Co. v. Dishong, 198 Md. 467, 473-474, 84 A. 2d 847, 850 (1951); Heaps v. Cobb, 185 Md. 372, 379, 45 A. 2d 73, 76 (1945). Moreover, Maryland's courts have inherent power to correct agency adjudicatory determinations that are unsupported by substantial evidence, arbitrary, capricious or illegal. See, e.g., Criminal Inj. Comp. Bd. v. Gould, 273 Md. 486, 500-501, 331 A.2d 55, 65 (1975); Heaps v. Cobb, supra, 185 Md. at 379, 45 A. 2d at 76; Hecht v. Crook, 184 Md. 271, 280, 40 A.2d 673, 677 (1945). See also Medical Waste v. Maryland Waste, 327 Md.

596, 610-611, 612 A.2d 241, 248 (1992).

It is well established that an administrative agency may, without violating the principle of separation of powers, adjudicate disputes of a type that might ordinarily also be resolved by a court. Thus, in Branch v. Indemnity Ins. Co., 156 Md. 482, 144 A. 696 (1929), this Court sustained the Workers' Compensation Act, which removed from the courts, for initial resolution, a class of disputes involving the rights of private employers and employees, and created instead a system wherein such claims would be initially resolved in an administrative forum. See also County Council v. Investors Funding, supra, 270 Md. 403, 312 A.2d 225 (sustaining authority of administrative commission to, inter alia, levy fines and impose

money damages); Hecht v. Crook, supra, 184 Md. at 277, 40 A.2d at 675 (observing, in 1945, that "innumerable controversies are decided today, by boards of legislative creation, of a character that traditionally fell within the scope of judicial inquiry").

It is readily apparent in the present case that the Act, in allowing the Department of Natural Resources to determine issues relating to compensation for property damage caused by surface mine dewatering, does not violate the principle of separation of powers. While the Department is given the authority to make an initial determination of a mine operator's liability to property owners affected by mining activities, this initial determination does not involve the Department in the exercise of

judicial powers. A mine operator aggrieved by the agency's initial determination is entitled to demand a contested case hearing at the administrative level and is entitled to judicial review. See § 7-6A-10.2(g) of the Natural Resources Article; Code (1984, 1993 Repl. Vol., 1994 Cum. Supp.), § 10-222 of the State Government Article. Accordingly, the Act neither vests the Department of Natural Resources with judicial power nor gives the Department unreviewable adjudicatory authority in violation of Article 8 of the Declaration of Rights and Article IV, § 1, of the Constitution. See, e.g., Attorney General v. Johnson, supra, 282 Md. at 284-287, 385 A.2d at 64-65; Shell Oil Co. v. Supervisor, supra, 276 Md. at 47, 343 A.2d at 527; Dep't of Nat. Res.

v. Linchester, supra, 274 Md. at 223, 334 A.2d at 522-523; County Council v. Investors Funding, supra, 270 Md. at 429-436, 312 A.2d at 240-243; Heaps v. Cobb, supra, 185 Md. at 378-379, 45 A.2d at 76.

VI.

Maryland Aggregates also contends that the Act is invalid for failure to provide for jury trial of issues regarding property owners' compensation. According to Maryland Aggregates, "disputes between landowners for damages have historically been actions at law with a right to trial by jury." (Maryland Aggregates' brief at 24). Since, under the Act, questions relating to compensation for property damage caused by mine dewatering are resolved in the first instance by the Department of

Natural Resources, Maryland Aggregates maintains that the Act violates Article 23 of the Maryland Declaration of Rights.[13/]

As we have discussed, the statute vests in the Department of Natural Resources the primary power to resolve disputes relating to compensation. In Murphy v. Edmonds, supra, 325 Md. at 370-375, 601 A.2d at 116-118, this Court

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13/ Article 23 of the Maryland Declaration of Rights provides as follows:

> "The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five thousand dollars, shall be inviolably preserved."

Article 5 of the Declaration of Rights also contains a guarantee of the right to jury trial. See Luppino v. Gray, 336 Md. 194, 200-201, 647 A.2d 429, 432 (1994).

explained that the right under the Maryland Constitution to a civil jury trial concerns the allocation between judge and jury of the responsibility for decision making in judicial proceedings. Thus, as we emphasized (325 Md. at 372, 601 A.2d at 116),

> "[w]here . . . the General Assembly has provided that a matter shall not be resolved in a judicial proceeding, by legislatively abrogating or modifying a cause of action, no question concerning the right to a jury trial arises. Since, under such circumstances, the matter will not be resolved in a judicial proceeding, the question as to whether a judge or a jury shall resolve the matter simply does not arise."

Consequently, this Court has specifically held the jury trial guarantee inapplicable where the legislature has committed to an administrative agency the initial decision making function with respect to a particular class of

disputes. In Branch v. Indemnity Ins. Co., supra, 156 Md. at 486, 144 A. at 697, this Court stated that under the Workers' Compensation Act, "the method prescribed . . . for the determination of an applicant's right to its specified benefits is essentially different from a civil proceeding in a court of law. . . ." Therefore, the Court concluded, workers' compensation proceedings "could not properly be classified as a civil proceeding in a court of law within the meaning of . . . the State Constitution," and the constitutional jury trial guarantee was simply inapplicable to administrative proceedings involving workers' compensation. 156 Md. at 485-489, 144 A. at 697-698.[14/]

14/ Quoting the Supreme Court's decision in Granfinanciera, (continued...)

Likewise, Article 23 does not apply to administrative proceedings under the Act challenged in the present case. The Act permits landowners damaged by surface mine dewatering to receive compensation

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14/ (...continued) S.A. v. Nordberg, 492 U.S. 33, 61, 109 S.Ct. 2782, 2800, 106 L.Ed.2d 26, 53 (1989), which involved the claimed right to jury trial in certain bankruptcy proceedings, Maryland Aggregates argues that the Legislature may not, by "placing exclusive jurisdiction in an administrative agency," deprive litigants of the right to jury trial. Maryland Aggregates' argument is not persuasive. Granfinanciera involved the Seventh Amendment to the United States Constitution, which does not apply to the States. See Curtis v. Loether, 415 U.S. 189, 192 n. 6, 94 S.Ct. 1005, 1007 n. 6, 39 L.Ed.2d 260, 265 n. 6 (1974); Bringe v. Collins, 274 Md. 338, 341-345, 335 A.2d 670, 673-675, application for stay denied, 421 U.S. 983, 95 S.Ct. 1986, 44 L.Ed.2d 475 (1975). Furthermore, in Granfinanciera, the Supreme Court drew its Seventh Amendment principles partly from

for that damage from the operators of the mines. As we have explained, it was constitutionally permissible for the Act to establish the compensation system and to administer it through the Department of Natural Resources. The observations

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14/ (...continued) considerations relating to the jurisdiction of the federal courts under Article III of the United States Constitution, and partly from the distinction recognized in Atlas Roofing Co. v. Occupational Safety Comm'n, 430 U.S. 442, 97 S.Ct,. 1261, 51 L.Ed.2d 464 (1977), between "public rights" and "private rights." Granfinanciera, S.A. v. Nordberg, supra, 492 U.S. at 51-55, 109 S.Ct. at 2795-2797, 106 L.Ed.2d 46-49.

Moreover, contrary to Maryland Aggregates' contentions, the holding in Granfinanciera, to the limited extent that it can be deemed persuasive, by analogy, to the Maryland Constitution and the Maryland courts, appears to be consistent with our holding in the present case. In one observation relevant to the present case, the (continued...)

of this Court in Branch v. Indemnity Ins. Co., supra, 156 Md. at 487, 144 A. at 697, are pertinent here:

> "It having been determined by this court that the . . . act . . . was a competent exercise of legislative authority, there would be apparent inconsistency in holding, nevertheless, that a right of jury trial according to the course of the common law must in such cases be recognized and unqualifiedly enforced."

Article 23 does not invalidate the General Assembly's decision to commit to

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14/ (...continued) Court stated as follows (Granfinanciera, S.A. v. Nordberg, supra, 492 U.S. at 52, 109 S.Ct. at 2796, 106 L.Ed.2d at 47):

> "In certain situations, of course, Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their resolution to a forum in which jury trials are unavailable."

the Department of Natural Resources the initial function of determining factual issues relating to compensation for property damage cause by surface mine dewatering.15/

VII.

Maryland Aggregates maintains that the regulation under the Act amounts to a

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15/ While Article 23 does not constrain the legislature's power to commit initial decision making authority over a class of matters to an administrative forum, Article 19 of the Maryland Declaration of Rights may, under circumstances not presented in the instant case, impose a substantive limitation on that power. Article 19 provides as follows:

> "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land."

taking of property without just compensation in violation of the federal and state constitutions.[16/] In particular, Maryland Aggregates argues that the statute, "in impairing the right to

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16/ The Takings Clause of the Fifth Amendment provides as follows:

> "[N]or shall private property be taken for public use, without just compensation."

This principle applies to the states through the Fourteenth Amendment. See Lolan v. City of Tigard, 114 S.Ct. 2309, 2316, 129 L.Ed.2d 304, 315 (1994), citing Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

Article III, § 40, of the Maryland Constitution reads as follows:

> "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."

pump water, has effected a taking because it substantially interferes with rights in the quarry parcel as a whole." (Maryland Aggregates' brief at 29).

As the circuit court recognized, it is significant to the present case that the surface mine dewatering Act has not yet been implemented in Maryland. The Supreme Court's statement in Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 494, 107 S.Ct. 1232, 1246, 94 L.Ed.2d 472, 494 (1978), is pertinent:

> "The posture of the case is critical because we have recognized an important distinction between a claim that the mere enactment of a statute constitutes a taking and a claim that the particular impact of government action on a specific piece of property requires the payment of just compensation."

In Hodel v. Virginia Surface Mining & Recl. Assn., 452 U.S. 264, 295-296, 101

S.Ct. 2352, 2370, 69 L.Ed.2d 1, 28 (1981), the Court explained the distinction in the context of a takings challenge to the federal Surface Mining Control and Reclamation Act, which had been held unconstitutional by the trial court and, consequently, never enforced. Observing that a takings challenge to regulatory legislation generally must be resolved by considering specific facts that might bear upon the economic impact, of the regulation and the particular nature of the government interference, the Court continued as follows (ibid.):

> "These 'ad hoc, factual inquiries,' must be conducted with respect to specific property, and the particular estimates of economic impact and ultimate valuation relevant in the unique circumstances.
>
> "Because appellees' taking claim arose in the context of a facial challenge, it

> presented no concrete controversy concerning either application of the Act to particular surface mining operations or its effect on specific parcels of land. Thus, the only issue properly before the District Court and . . . this Court is whether the 'mere enactment' of the Surface Mining Act constitutes a taking. . . . The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it 'denies an owner economically viable use of his land . . . . .'" Agins v. Tiburon, [447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106, 112 (1980)]. See Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978)."

See also Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886, 2893-2895, 120 L.Ed.2d 798, 813-815 (1992); Keystone Bituminous Coal Assn. v. DeBenedictis, supra, 480 U.S. at 495, 107 S.Ct. at 1247, 94 L.Ed.2d at 495 (observing that

litigants "face an uphill battle in making a facial attack on the Act as a taking"); Governor v. Exxon Corp., supra, 279 Md. at, 437, 370 A.2d at 1117; Bureau of Mines v. George's Creek, 272 Md. 143, 167-175, 321 A.2d 748, 761-765 (1974). Compare, Maryland Port Admin. v. QC Corp., 310 Md. 379, 529 A.2d 829 (1987) (noting complexity of takings law in challenges to legislation as applied).

The Supreme Court has recently emphasized that it is only where "the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, [that] he has suffered a taking." Lucas v. South Carolina Coastal Council, supra, 112 S.Ct. at 2895, 120 L.Ed.2d at 815. See also

Governor v. Exxon Corp., supra, 279 Md. at 437, 370 A.2d at 1117, and cases there cited. The Supreme Court has strictly construed the requirement that, for economic regulatory legislation to constitute a "taking," property must be rendered essentially valueless by government action. For example, the legislation challenged in Keystone Bituminous Coal Assn. v. DeBenedictis, supra, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472, required mine operators to leave in place 50% of the bituminous coal lying beneath certain structures, and further required mine operators to provide compensation for subsidence damage caused by mining. The Court rejected the mine operators' facial takings challenge to the enactment, in

part because (480 U.S. at 495-496, 107 S.Ct at 1247, 94 L.Ed.2d at 495)

> "petitioners have not claimed, at this stage, that the Act makes it commercially impracticable for them to continue mining their bituminous coal interests in western Pennsylvania. Indeed, petitioners have not even pointed to a single mine that can no longer be mined for profit."

Absent such a showing, the Court held that the mine operators had failed to show "any deprivation significant enough to satisfy the heavy burden placed upon one alleging a regulatory taking." 480 U.S. at 493, 107 S.Ct. at 1246, 94 L.Ed.2d at 493.[17/]

17/ By contrast, "[w]here the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation." Yee v. City of Escondido, Cal., (continued...)

Maryland Aggregates does not contend that the Act makes surface mining a commercial impracticability for its members, nor that it renders their property entirely without value. Not only does the Act not require mine operators "to sacrifice all economically beneficial uses" of their property, Lucas v. South Carolina Coastal Council, supra, 112 S.Ct. at 2895, 120 L.Ed.2d at 815, it does not prevent them from continuing with the economically beneficial use to which the mines are currently put. Although the statute may make surface mining more expensive, by requiring mine operators to compensate other property

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17 (...continued) 503 U.S. 519, 112 S.Ct. 1522, 1526, 118 L.Ed.2d 153, 162 (1992). See also Dep't of Natural Resources v. Welsh, 308 Md. 54, 521 A.2d 313 (1986).

owners for damage cause by dewatering, land use regulation may "transfer wealth from the one who is regulated to another" without violating the takings clause. Yee v. City of Escondido, Cal., 503 U.S. 519, 112 S.Ct. 1522, 1529, 118 L.Ed.2d 153, 166 (1992). The principles set forth by the Supreme Court in Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211, 223, 106 S.Ct. 1018, 1025, 89 L.Ed.2d 166, 177 (1986), are persuasive here:

> "In the course of regulating commercial and other human affairs, Congress routinely creates burdens for some that directly benefit others. For example, Congress may set minimum wages, control prices, or create causes of action that did not previously exist. Given the propriety of the governmental power to regulate, it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another."

See also Concrete Pipe & Prod. v. Const. Laborers Pen. Tr., 113 S.Ct. 2264, 2290-2292, 124 L.Ed.2d 539, 577-578 (1993). The circuit court properly granted summary judgment in favor of the State on Maryland Aggregates' claim based on the takings clauses.

VIII.

Finally, Maryland Aggregates contends that the mechanisms created by the Act for establishing zones of dewatering influence violate principles of procedural due process. Like the circuit court, we hold that Maryland Aggregates' contentions are without merit.[18/]

18/ In its reply brief, Maryland Aggregates also objects to the procedures for establishing claims (continued...)

This Court has recently explained the nature of the guarantee of procedural due process in the context of administrative proceedings (Maryland State Police v. Zeigler, 330 Md. 540, 559, 625 A.2d 914, 923 (1993)):

> "Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before

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18/ (...continued) to compensation under the Act. The Act provides that "[t]he Department shall adopt regulations to establish an administrative process to expedite the resolution of water supply loss or property damage claims arising under this section." § 7-6A-10.2(h) of the Natural Resources Article. The Department has (continued...)

them. See, e.g., Schultz v. Pritts, [291 Md. 1, 7, 432 A.2d 1319, 1323 (1981)]; Ottenheimer Pub. v. Employ. Sec. Adm., 275 Md. 514, 520, 340 A.2d 701, 704 (1975); Rogers v. Radio Shack, 271 Md. 126, 129, 314 A.2d 113, 115 (1974); Dal Maso v. Bd. of Co. Comm'rs, supra, 238 Md. at 337, 209 A.2d at 65. See also Heft v. Md. Racing Comm'n, 323

18/ (...continued) not yet promulgated any such regulations because of the injunction against enforcement of the Act. Furthermore, while Maryland Aggregates argues that a mine operator is not entitled to judicial review of decisions relating to compensation, we agree with the State that a mine operator or property owner is entitled to review of a "decision of [the Department of Natural Resources] regarding a finding of proximate cause relating to water supply failure or property damage within a zone of dewatering influence. This decision is reviewable first as a contested case hearing. . . ." (State's brief at 22). A party aggrieved by the result of the contested case hearing may seek judicial review in the circuit court. Code (1984, 1993 Repl. Vol., 1994 Cum. Supp.), § 10-222 of the State Government Article.

> Md. 257, 270-272, 592 A.2d 1110, 1116-1118 (1991), and authorities there cited."

Maryland Aggregates claims that the Act violates fundamental principles of fairness with respect to the establishment of zones of dewatering influence, stating that "the quarry owner is not afforded an opportunity under the Act for input into the delineation of the zone." (Maryland Aggregates' brief at 31). This position is clearly mistaken.

Under the Act, if a mine receives a water appropriation permit, then "the Department [of Natural Resources] shall establish, as a condition of the [mine operator's] surface mining permit . . . a zone of dewatering influence around the surface mine." § 7-6A-10.2 (b)(1) of the Natural Resources Article. Subsection (g) of § 7-6A-10.2 provides that "[t]he

Department shall provide opportunity for a contested case hearing in accordance with the provisions of § 8-206 of this article." Section 8-206(g) in turn provides in part as follows:

> "Upon written request the Department shall grant a contested case hearing if it determines that:
> (1) The requester has a specific right, duty, privilege, or interest which is or may be adversely affected by the permit determination or license decision and which is different from that held by the general public
> . . . ."

The establishment of the zone of dewatering influence is generally a decision in which a mine operator has a unique interest that may be adversely affected by an improper decision. Furthermore, the provisions of the Administrative Procedure Act that govern

contested case hearings, Code (1984, 1993 Repl. Vol., 1994 Cum. Supp.), §§ 10-201 through 10-226 of the State Government Article, would apply to a hearing brought under § 8-206. See § 10-202(d) (defining "contested case" to include the "amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing") and § 10-202(f)(3)(iv) (defining "license" to include a permit) of the State Government Article. See generally Medical Waste v. Maryland Waste, supra, 327 Md. 596, 612 A.2d 241; Sugarloaf v. Waste Disposal, 323 Md. 641, 663-668, 594 A.2d 1115, 1126-1128 (1991), and cases there cited. Contested case hearings under the Administrative Procedure Act include the rights to present evidence and to seek

judicial review. §§ 10-213 and 10-222 of the State Government Article. Thus, contrary to Maryland Aggregates' contention, the operators of surface mines will have ample opportunity to contribute to the delineation of zones of dewatering influence in a manner that satisfies basic principles of fairness.

In sum, we conclude that the statute is not constitutionally deficient on any of the grounds urged by Maryland Aggregates.

OTHER OPINIONS, ETC.

Opinion and Order of the Circuit Court for Anne Arundel County (Judge Duckett) dated March 23, 1992 granting Plaintiff's Motion for Interlocutory Injunction:

MARYLAND AGGREGATES ASSOCIATION, INC.	* IN THE
	* CIRCUIT COURT
Plaintiffs	
	* FOR
vs.	
	* ANNE ARUNDEL COUNTY
STATE OF MARYLAND, et al.,	* CASE NO.: C-91-02275
Defendants	

* * * * * * *

O R D E R

Plaintiffs' Motion for an Interlocutory Injunction having come on for hearing in open court, the Court having received and considered the evidence, memoranda and arguments of counsel, it is this 23rd day of March, 1992, for the reasons stated by the Court in its oral opinion on March 9, 1992, which reasons are incorporated herein by reference, by the Circuit Court for Anne Arundel County,

ORDERED, that:

1. The interlocutory injunction

requested by the Plaintiffs be, and the same is hereby, granted, and

2. The Defendants are hereby enjoined from implementing the provisions of Annotated Code of Maryland, Natural Resources Article, §§ 7-6A-10.1 and 7-6A-10.2 until such time as this matter is determined on the merits, and

3. Pursuant to Maryland Rule BB75, a bond in the amount of Twenty-Five Thousand ($25,000.00) Dollars shall be posted by the Plaintiffs.

/s/
WARREN B. DUCKETT, JR.
JUDGE

Opinion and Order of the Circuit Court for Anne Arundel County (Judge C. Cawood, Jr.) dated March 7, 1994 granting Defendants' Motion for Summary Judgment:

MARYLAND AGGREGATES ASSOCIATION, INC., et al.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	ANNE ARUNDEL COUNTY
STATE OF MARYLAND, et al.	*	Case No.: C-91-02275
	*	
Defendants		

* * * * * * *

OPINION AND ORDER

Legislation is normally the bailiwick of the legislative body which passes the law, and the executive, which approves it. Both may act for a myriad of reasons, after considering whatever evidence, testimony, or opinion as they desire.

The judiciary has an interest in legislation, but it is a much more limited role. We do not decide the wisdom of the legislation, nor are we the proper forum to debate whether a particular piece of legislation will do

more harm than good. Our function, outside of interpreting the legislation, is simply to decide whether it exceeds some boundary of constitutionality.

Plaintiffs in this particular case find all sorts of violations of constitutional boundaries. We don't see it that way. We believe Plaintiffs would have us act as a super-legislature, determining the reasonableness of Md. Code, Natural Resources §7-6A-101 and 102 (sic). As we believe we are legally required, we decline to do so.

The beginnings of the problem herein are not hard to follow. In 1968, the Court of Appeals held in Finley v. Teeter Stone, Inc., 251 Md. 428 (1968), that the Finleys were not entitled to recover damages from Teeter Stone for the latter's removal, in their quarrying operation, of percolating water which

caused sinkholes on Plaintiffs' property. The Court ended its decision with a prophetic phrase:

> It was suggested at the argument by counsel for the Finleys that because of the increase of knowledge in regard to geology and the action and reaction of soil and percolating waters, and in view of the serious and extensive damage suffered by the Finleys by the appearance of the sink holes on their land, an expanded 'American rule' should be adopted by us. There is little question that the Finleys have been gravely injured by the sink holes, and although we are sympathetic with their plight, we are of the opinion that we must adhere to the authorities we have cited. If the public interest requires a change of the law in regard to percolating waters, a remedy lies with the General Assembly where the rights, duties and opinions of those concerned could be fully considered and evaluated. Finley, at 445.

After twenty-five years of controversy, the General Assembly did exactly that. We must review the challenge to the resultant bill.

PROPER PARTIES

First we discuss briefly the proper parties. Plaintiffs named the State of Maryland, the Governor of the State of Maryland, the State Attorney General, and the Secretary of the Department of Natural Resources as defendants in its complaint. The State argues that the State of Maryland, its Governor, and its Attorney General are all immune from suit under the doctrine of sovereign immunity. The doctrine of sovereign immunity bars litigants from suing the State or any of its agencies unless this immunity has been expressly waived. Washington Suburban Sanitation Commission v. Pride Homes, 291 Md. 537, 544 (1981). Torrey C. Brown, M.D., Secretary of the Department of Natural Resources is the only proper defendant named in this case. Governor Schaefer, Attorney

General Curran, and the State of Maryland should all be dismissed from this action. Since there is one proper defendant, this is a minor problem.

THE RATIONAL BASIS TEST

Plaintiffs argue that because the Act at issue applies to quarry operators but not to other large water users it makes an impermissible classification in violation of the Equal Protection clause. Since quarry operators are not a suspect class, the legislation is subject to the rational basis, not the strict scrutiny, form of review. The former test holds that courts should defer to the legislature and uphold any law that is rationally related to a legitimate state interest if the law is supported by any set of facts which is known or could reasonably be inferred in support of the legislation. Bowie Inn, Inc. v. City of

Bowie, 274 Md. 230, 281 (1975).

Maryland's standard for the rational basis test requires that legislation have a "fair and substantial" relationship to a legitimate state purpose. Md. State Bd. of Barber Ex. v. Kuhn, 270 Md. 498, 507 (1973). As articulated in Bowie:

> The exercise by the Legislature of the police power will not be interfered with unless it is shown to be exercised arbitrarily, oppressively, or unreasonably...the wisdom or expediency of a law adopted in the exercise of the police power of a state is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported...such a statute carries with it a strong presumption of constitutionality. Bowie, at 279.

This is a summary judgment motion. The Defendants are not required to prove the wisdom of the statute as a matter of law, as is usually the burden of the

proponent of a summary judgment motion, but only that there is a rational basis for the statute as a matter of law. In other words, if there is a rational basis for passing the statute as a matter of law, we must grant summary judgment.

The Maryland General Assembly had a substantial rational basis to pass the Act. The Assembly heard testimony from many experts on both sides of this issue, reviewed various geological studies, and corresponded with concerned citizen's groups and mining interests over a period of four years (1987-91) before passing the Act. It heard from experts like Gerald Ahnell, certified geological scientist and Director for the Hydrology Division for Dunn Geoscience Corporation, from representatives on behalf of the Lehigh Portland Cement Company, whose interests would be adversely affected by

passing the Act, and from groups of concerned citizens like the Boyd's Civic Association and Citizens Opposed to the Destruction of the Environment before passing the legislation.

In 1986 Carroll County Food's well went dry and had to be redrilled from a depth of 160 feet to 503 feet. The company claimed that this was a direct result of dewatering from the neighboring Genstar quarry, and wrote Genstar demanding $6,000 compensation for re-drilling the well. While not admitting liability, the quarry paid the $6,120.93. This is part of a pattern; the quarries have offered to pay private citizens living nearby with similar complaints, while adamantly denying any responsibility or fault.

The State-Wide-Coalition of Non-Coal Surface Mining, a coalition of

residents and businesses who are impacted by non-coal surface mines (rock quarries) in their communities, appeared and testified in favor of the Act in March of 1991. They made a series of arguments for passing the legislation, pointing out that growth and development in Maryland is bringing quarries and residents in ever-closer proximity and conflict. They pointed out that the DNR, as the regulatory agency for the quarries, has the authority to establish zones of dewatering influence around them. They argued that legislation affecting quarries, but not other large water users, is not discriminatory because quarries are unique in the quantities of water they pump out.

The Coalition discussed U.S. Geological Survey 968, entitled Development of Sinkholes Resulting From

Man's Activities in the Eastern United States, a study which supports the conclusion that sinkholes are either caused or substantially worsened by mining. It also talked about Carroll County, which hired an independent consultant to study the problem locally. The consultant concluded that dewatering had a substantial negative impact on surrounding water supplies.

Several other concerned citizen's groups, like the Friends of Beaver Creek, the North Potomac Citizen's Association, and others wrote letters and offered testimony in support of the Act. While dewatering is a controversial issue, the legislative history shows that there is a substantial basis for passing laws to regulate it.

Needless to say, we do not decide whether Plaintiffs' or Defendants'

experts are more likely to be correct. The proper forum for that is the Legislature. In passing almost any law, one can argue whether it has a rational basis, and which experts were really correct or really told the truth. We believe it would be anomalous to present all the experts before us.

Plaintiffs further argue that there is no rational basis for the legislation because quarries do not damage surrounding lands. This goes directly against a legislative finding that "dewatering in karst terrain may result in property damage to landowners...around a surface mine." Md. Nat. Res. Code Ann. §7-6A-10.2(a). Legislative findings of fact are the sole province of the legislature and may not be disputed by the courts. This raises the issue of separation of powers, a cornerstone of

our government and legal system. As stated above, the enactments of the Legislature are presumptively valid, "this presumption prevail[ing] until it appears that the enactment...is invalid or obnoxious to the expressed terms of the Constitution...." Dep't of Nat. Res. v. Linchester Sand and Gravel Corp., 274 Md. 218 (1974). Furthermore, the right of the Legislature to delegate powers to administrative agencies has been recognized in this State for over 125 years. Id. Thus, Plaintiffs' argument, that the delegation of fact-finding powers by the Legislature to an administrative agency is unconstitutional, is without merit. Linchester, at 218-223.

Plaintiffs also argue that the Act holds quarry operators "strictly liable for any water loss suffered within a zone of influence determined by the DNR" and

that this is an arbitrary and unfair imposition of liability. Plaintiffs' Brief, at 20. The DNR does not hold quarries strictly liable for water loss but requires a showing of probable cause before imposing any liability, which again, is a reviewable decision. Md. Nat. Res. Code Ann. §7-6A-10.2(f).

DUE PROCESS

Plaintiffs argue that the Act does not bear any real and substantial relationship to a legitimate state objective, and that it therefore constitutes an unlawful exercise of state police powers in violation of the Due Process clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of rights. However, there is a strong presumption of the constitutionality of a statute passed by the legislature, and "a statute will not be held void if there are any

considerations relating to the public welfare by which it can be supported." Salisbury Beauty Schools v. State Bd. of Cosmetologists, 268 Md. 32, 48 (1973). Statutes are so strongly presumed to be constitutional that courts will not only presume that the legislature had a rational basis for enacting a piece of legislation, but will even hypothesize reasons for the law's existence if the legislature fails to give reasons for it. In this case, however, there is no need for presumption or hypothesis. The Maryland General Assembly discussed the basis for the legislation at length in House Bill 499-Surface Mines-Permit Conditions for Dewatering a Pit. This bill was drafted on the basis of the testimony of many experts (see Rational Basis text). Plaintiffs apparently do not understand how the legislature

reached its decision to pass the Act, stating that "fears and concerns of persons ignorant in the ways of underground water...cannot form a rational basis for legislation." Plaintiffs' Brief, at 23.

5TH AMENDMENT "TAKING" ARGUMENT

Plaintiffs allege that the mere enactment of the Act at issue constitutes a taking of the quarry operators' property without just compensation, insofar as they allege that the legislation regulates the use of the property to the extent that it is commercially impractical to conduct quarry operations. Hodel v. Virginia Surface Mining and Reclamation, 452 U.S. 264 (1981), clearly sets forth the standard by which to evaluate a facial takings claim as follows: "the statute regulating the uses that can be made of

property effects a taking if it denies an owner economically viable use of his land." Hodel, at 296. In Hodel, the court held that such a taking was not unconstitutional unless just compensation was unavailable. Hodel, at 297. As the Hodel plaintiffs made no attempt to obtain administrative relief from the regulation before alleging a 5th Amendment "taking" violation, the court held that their claim was not yet ripe for review. The same holds true in this case. Plaintiffs' 5th Amendment claim of an uncompensated taking will not become ripe for review until they have exhausted all administrative remedies.

RIGHT TO JURY TRIAL

As succinctly stated by the Defendants' Motion, the federal right to jury trial is not applicable to the case at bar as no fundamental interest is

implicated by the arguments set forth by counsel.

The Maryland Declaration of Rights, which guarantees "the right of trial by jury of all issues of fact in civil proceedings...where the amount in controversy exceeds the sum of $500" has been interpreted by the Court of Appeals of Maryland to provide for the adjudication of rights by administrative agencies to fulfill legislative purposes without violation of jury trial rights. Linchester, supra. The quasi-judicial role of administrative agencies has long been accepted by this State as being constitutional. Id. "The distinction between an administrative agency's fact-finding function and the exercise of the State's judicial power...was definitively pointed out...in Dal Maso v. County Commrs., 182 Md. 200 (1943)...

> 'If their findings, resolutions, or orders are resisted or ignored, they must call on the courts to enforce them.' ...[T]he judiciary has an undeniable constitutionally-inherent power to review, within limits, the decisions of these administrative agencies." Id. at 222-223.

Plaintiffs allege that administrative fact-finding is inappropriate for the case at hand, as it is an old common law cause of action between private landowners. Plaintiffs' Response, at 34. However, the wetlands statute at issue in Linchester is very similar to the one at bar, in that a permit had to be obtained from an administrative agency (the DNR) before altering any wetlands property, and involved a dispute between a private corporation and the DNR. The delegation of administrative authority to the DNR was found wholly constitutional.

OTHER MISCELLANEOUS ARGUMENTS

Plaintiffs' Equal Protection of

nonparties to the suit (those residents of the 19 other counties in Maryland unaffected by the legislation) argument fails in that the Plaintiffs lack the standing to assert their constitutional claims. Furthermore, as stated by Defendants' motion (at 39), the Legislature may distinguish between counties, given a rational basis for doing so. The statute at bar discriminates among counties based on the geological structure of the land, as the four counties affected are limestone rich terrain. Also, as previously stated, the Legislature need not cure ALL evils at once--"the Legislature may select one phase of a problem and apply a remedy there, neglecting for the moment other phases of the problem." Bowie, at 241.

Plaintiffs' procedural due process and fundamental fairness arguments also

fail, in that the legislation is equipped with a review/appellate process for the permit application procedure in order to pursue quarry operations within the four counties. With regard to the zones of dewatering influence, such arguments are premature, as no such zones have been established, nor have any regulations setting forth the manner in which they will be established been passed (although Md. Nat. Res. Code Ann. §7-6A-10.2(b)(2) sets forth guidelines for the delineation of such zones). Clearly, the Act is not fundamentally unfair, as there is adequate opportunity for hearing and opposition to the permit application procedure.

Accordingly, it is this 7th day of March, 1994,

ORDERED that the Motion to Dismiss is granted as to all Defendants except

Torrey C. Brown, and it is further,

ORDERED that the Defendants' Motion for Summary Judgment is granted, and judgment is entered in favor of the Defendant Torrey C. Brown for costs.

/s/
James C. Cawood, Jr.
Judge

CONSTITUTIONAL AND STATUTORY PROVISIONS

Md. Code Ann., Nat. Res. § 7-6A-10.1 (Supp. 1994)

> **Dewatering in karst terrain; legislative intent; zones of dewatering influence established; program established.**

(a) In general. - The General Assembly finds that in certain regions of the State dewatering of surface mines located in karst terrain may significantly interfere with water supply wells and may cause in some instances sudden subsidence of land, known as sinkholes. Dewatering in karst terrain may result in property damage to landowners in a definable zone of dewatering influence around a surface mine.

(b) Legislative intent; zones of dewatering influence established; program established. - It is the intent of the

General Assembly to protect affected property owners in Baltimore, Carroll, Frederick, and Washington Counties where karst terrain is found by directing the Department to establish zones of dewatering influence around surface mines in karst terrain and to administer a program requiring permittees to mitigate or compensate affected property owners in these counties. (1991, ch. 379.)

Md. Code Ann., Nat. Res. § 7-6A-10.2 (Supp. 1994)

Permit conditions for dewatering a pit in karst terrain.

(a) Definitions. - (1) In this section the following words have the meanings indicated.

(2) "Dewater" or "dewatering" means to pump water out of a pit.

(3) "Karst terrain" means an irregular topography that is:

(i) Caused by a solution of limestone and other carbonate rock; and

(ii) Characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams.

(4) "Lineaments" means the surface manifestation of cracks, fissures, fractures, and zones of weakness that, generally, are observable on aerial photographs as straight or nearly straight lines.

(b) Zone of dewatering influence established; extent of zone. - (1) If a permittee is issued a water appropriation permit under § 8-802 of this article to dewater a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington Counties, the Department shall establish, as a condition of the permittee's surface mining permit under § 7-6A-09 of this subtitle, a zone of dewatering influence around the surface mine.

(2) The areal extent of the zone of dewatering influence shall be based, as appropriate, on local topography, watersheds, aquifer limits, and other hydrogeologic factors, including the occurrence of natural fractures, cracks, crevices, lineaments, igneous dikes, changes in rock type, and variations in the water-bearing characteristics of formations.

(c) Remedies. - Within the zone of dewatering influence established under subsection (b)(1) of this section, the permittee shall:

(1) Replace, at no expense to the owner of real property that is affected by the surface mine dewatering, a water supply that fails as a result of declining ground water levels; and

(2) Upon a determination by the Department of proximate cause after the permittee has received proper notice and an opportunity to respond and provide information, pay monetary compensation to the affected property owner or repair any

property damage caused as a result of the sudden subsidence of the surface of the land.

(d) Adequate replacement. - (1) An individual domestic water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well that is capable of meeting the minimum yield requirements established in regulations adopted by the Department of the Environment during the period of pit dewatering.

(2) A municipal, industrial, commercial, institutional, or farming water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well or other alternative water supply that is capable of yielding water equal to the volume used or needed by the property owner before the disruption of water supply.

(e) Adequate repair; measure of compensation. - (1) Real or personal property within the zone of dewatering influence in karst terrain in Baltimore, Carroll, Frederick, and Washington Counties found by the Department to have been damaged as a result of sudden land surface subsidence shall be considered to

be repaired adequately by a permittee if the permittee returns the damaged property to its condition before the subsidence of the surface of the land.

(2) If the damaged real or personal property is not capable of being restored to its pre-subsidence condition, the permittee shall compensate the owner of the real or personal property monetarily by the difference of the fair market value of the property as the property would exist but for the sudden land subsidence, and the fair market value of the property as a result of the damage.

(3) Notwithstanding the other provisions of this subsection, the permittee and the property owner may agree on monetary compensation or other mitigation in lieu of restoration.

(f) Proximate cause. - The Department may not require a permittee to replace water supplies, as provided in this section, if the permittee demonstrates to the Department by clear and convincing evidence that the proximate cause of the loss of water supply is not the result of pit dewatering.

(g) Contested case hearing. - The Department shall provide opportunity for a contested case hearing in accordance with the provisions of § 8-206 of this article.

(h) Regulations. - The Department shall adopt regulations to establish an administrative process to expedite the

resolution of water supply loss or property damage claims arising under this section.

(i) Exceptions. - Compensation, restoration, or mitigation provided by this section does not apply to:

(1) Improvements that are made to real property within an established zone of dewatering influence following a final decision by the Department to issue a surface mining permit; or

(2) Improvements that are made to real property following the establishment of a zone of dewatering influence as a condition of an existing surface mine permit. (1991, ch. 379; 1994, ch. 739, § 2.)

The only change in the statute as enacted occurred in 1994 when subsection (g) was amended (Acts 1994, ch. 379, § 2). As originally enacted, subsection (g) read:

Contested case hearing. - (1) A permittee or an affected property owner who is aggrieved by a determination of the Department under this section may request a contested case hearing. (Md. Code Ann., Nat. Res. § 7-6A-10.2(g) (Supp. 1991))

Constitution of the United States

AMENDMENT I
Freedom of Religion, Speech and Press; Peaceful Assemblance; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V
Grand Jury Indictment For Capital Crimes; Double Jeopardy; Self Incrimniation; Due Process Of Law; Just Compensation For Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV
Section 1.
Citizenship Rights Not to Be Abridged by States

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MANNER OF RAISING FEDERAL QUESTIONS

The federal questions sought to be reviewed by this Court were raised as follows: The complaint filed herein pursuant to the Uniform Declaratory Judgment Act, Md. Code Ann., Cts. & Jud. Proc. §§ 3-401 - 415 (1989) contained the following allegations among others:

Gravamen of all Counts

10. The Act is unconstitutional, and, therefore, null and void for the following reasons:

A. There is no evidence that a rock quarry creates a dewatering influence of such magnitude, especially as compared to other users of water in karst terrain, so as to justify the imposition of liability upon rock quarry operators, and not upon other water appropriators, for losses of neighboring water supplies or subsidences of neighboring land.

The Act thus bears no substantial relation to the health, safety, morals, or welfare of the people of the State of Maryland or to any other legitimate objective of the legislature, and, therefore, goes beyond the police power of the State and denies Plaintiffs due process of law in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United State Constitution.

B. The Act singles out rock quarry operators and imposes upon them a liability for loss of water supplies and the sudden subsidence of land which liability is not imposed upon any other large user of water in karst terrain. There is no rational basis for such distinction. Thus, the Act denies Plaintiffs equal protection of the laws in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

C. The Act deprives rock quarry operators of the property right given them by the common law and made applicable to the citizens of Maryland by Article 5 of the Maryland Declaration of Rights and enjoyed by all other water users in the State to use all percolating water in and under their property for any

legitimate purpose without regard to the effect of such use on the property of others, but does not deprive any other user of water in the State of Maryland of such common law right. The distinction between rock quarry operators' use of water and the use of water by others is not justified by any overriding social interest, and, thus does not pass the strict scrutiny test for such legislation laid down by the courts of the State of Maryland and the United States. The Act thus denies Plaintiffs equal protection of the laws in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

* * *

E. The Act deprives rock quarry operators of their property right in the percolating waters under their

land without just compensation in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

F. The Act fails to make provision for overlapping zones of dewatering influence and imposes liability on rock quarry operators for the loss of such things as a municipal or industrial water supply even though the municipality or industry may have made a significant and substantial contribution to the dewatering of the area, and, indeed, even though the contribution of the municipality or industry to the dewatering may have been many times greater than that of the rock quarry. Accordingly, the Act denies Plaintiffs due process of law in violation of Article 24 of the Maryland Declaration of

Rights and the Fourteenth Amendment to the United States Constitution.

G. The Act discriminates against the citizens of the State of Maryland in that only those within a zone of dewatering influence in karst terrain in four counties whose wells go dry or land subsides are entitled to the benefits of the Act even though the water appropriators elsewhere in the State may have created greater zones of dewatering influence with a more pervasive effect on wells and subjacent support than rock quarries in karst terrain. The Act thus denies citizens of the other 19 counties in the State and Plaintiffs equal protection of the laws in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

H. The Act imposes a liability upon the operator of a rock quarry for activities that preceded the Act. Plaintiffs' quarries have been in operation for many years and have been issued permits by the State of Maryland authorizing them to pump water from their quarry pits in order to mine the rock. There is now no alternative to such pumping. The Act, for the first time, seeks to impose upon them a liability for a lawful activity which brings with it a potential for almost unlimited liability within a zone of dewatering influence. The Act thus constitutes an attempt to change a rule of law to give it retroactive effect and, therefore, constitutes a taking of Plaintiffs' property without due process of law in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth

Amendment to the United States Constitution.

I. The Act permits the Department of Natural Resources to establish a zone of dewatering influence and imposes unique liability on rock quarry operators within such zones, but does not give them any opportunity for input in the establishment of the zones of dewatering influence or recourse to contest their accuracy once they are established. This deprives Plaintiffs of their property without due process of law in violation of Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

* * *

The Circuit Court for Anne Arundel County passed upon Petitioner's contentions by granting summary judgment

to the Defendants on March 7, 1994 for the reasons stated in its opinion of that date, which is included in this Appendix, but which held in essence that there was a rational basis for the legislation, that the Act did not deprive Petitioners of due process of law, that Petitioners' Fifth Amendment taking of property without due process of law argument was not ripe for review because Petitioners had not exhausted all administrative remedies, and that Petitioners' procedural due process and fundamental fairness arguments fail because the legislation is equipped with a "review/appellate process" for the permit application procedure.

Petitioners filed an appeal of that decision to the Court of Special Appeals of Maryland and petitioned the Court of Appeals of Maryland, Maryland's highest

court, to issue a writ of certiorari to the Court of Special Appeals to review the decision of the trial court prior to the time that the Court of Special Appeals heard the case. That petition was granted. In its brief to the Court of Appeals, Petitioner raised the federal question sought to be reviewed as follows:

> If there was no evil at hand for correction, and there wasn't, requiring Plaintiffs to submit to imposition of zones of dewatering influence around their quarries within which they would be liable for all water supply failures, including municipal and industrial failures, must necessarily be unreasonable, unduly oppressive, and patently beyond the necessities of the case without

> a real and substantial relation to the objects sought to be attained. As such, the Act is an invalid exercise of the police power, violating the due process clause of the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights.

Just as was the case with respect to water supply failures, there was thus no evil at hand for correction so that the Act fails the threshold test of due process. * * * (citations omitted)(12).

Accordingly, there is no rational basis for distinguishing quarries from other water users and the Act, which admittedly singles out quarries, denies Plaintiffs equal protection of the law (14).

It is submitted that the Act should be subject to heightened scrutiny because it deprives Plaintiffs of the very important and valuable right enjoyed by all other landowners in the State to be able to use the percolating water in their property for any legitimate purpose without fear of liability for the consequences thereof upon their neighbors. Finley v. Teeter Stone, Inc., 251 Md. 428 (1968). Whether it is or not is not deemed material, however, because the Act cannot pass the less demanding rational basis test (16).

The purpose of the equal protection clause is to protect persons against intentional and arbitrary discrimination. (Citations omitted.) "Where all persons, in like circumstances, are treated the same under the laws, there is no deprivation of equal protection, but a

law which operates upon some persons or corporations, and not upon others like situated or circumstanced, or in the same class, is invalid.' *** (citations omitted.) (16-17).

Although "equal protection does not require that all persons be dealt with identically *** it does require that a distinction made have relevance to the purpose for which the classification is made." *** (citations omitted.) (17).

The distinction made between quarry owners in the four counties and all other large appropriators of water does not rest upon "some ground of difference having a fair and substantial relation to the object of the legislation." *** (citations omitted.) Simply put, a large appropriator of water is a large appropriator of water and there is no differences beween well failures and sinkholes

caused by one than the other. There is no rational explanation to justify why only quarries, and not other large appropriators of water "like situated," are regulated by the Act. Without a rational basis for distinction the Act is unconstitutional because it denies Plaintiffs equal protection of the law. * * * (Citations omitted.) (19).

The Act results in a taking of Plaintiffs' property without due process of law (27).

The Act denies Plaintiffs' procedural due process (30).

The Act discriminates against the citizens of the four counties involved who do not live near quarries and against citizens of all other counties (32).

Some specific errors committed by the lower court. *** Plaintiffs' claim of an unconstitutional taking is not ripe

for review.

On November 7, 1994 the Court of Appeals of Maryland passed upon Petitioner's contentions by its Order reading in part as follows:

> "For reasons to be stated in an opinion later to be filed, it is this 7th day of November, 1994, ORDERED by the Court of Appeals of Maryland, a majority of the Court concurring, that the judgment of the Circuit Court for Anne Arundel County is affirmed; ***."